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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 David Mayorquin,

13 Defendant.
14

No. CR-19-50048-002-TUC-JGZ (BGM)

ORDER

15 Pending before the Court is Defendant David Mayorquin's Rule 60 Motion for
16 Relief from Judgment, (Doc. 23). On July 11, 2024, this Court granted Plaintiff United
17 States of America's Motion for Entry of Garnishment Disposition Order, (Doc. 13),
18 ordering Garnishee, Northwestern Mutual Life Insurance Company (Northwestern
19 Mutual), to remit the cash surrender value of a life insurance policy owned by Defendant
20 as partial payment of the judgment against Defendant in this case. (Doc. 14.) Defendant
21 argues the Court should vacate the Garnishment Disposition Order because he did not
22 receive timely notice of the United States' Ex Parte Application for Writ of Garnishment,
23 (Doc. 6), and the life insurance policy is exempt from garnishment under Arizona law.
24 (Doc. 23 at 2–3); A.R.S. 33-1126(a)(6).

25 **I. Background**

26 On September 17, 2018, Defendant pleaded guilty to Unlawful Importation of
27 Wildlife arising from the illegal importation of large quantities of sea cucumber between
28 2010 and 2012. (Doc. 20 at 1; Doc 1-5.) Defendant's sentence included a fine of \$973,490

1 and restitution of \$40,000. (*Id.*) As of May 21, 2024, Defendant owed \$362,235. (Doc. 5
2 at 1.) On June 5, 2024, the United States applied for a Writ of Continuing Garnishment
3 naming Northwestern Mutual as Garnishee (the Writ), (Doc. 5), which the Clerk of Court
4 issued the same day, (Doc. 6). On June 17, 2024, the United States sent a copy of the Writ
5 via certified mail to Defendant at the address 2901 E. Calle Sin Pecado, Tucson, AZ 85718.
6 (Doc. 13 at 1; Doc. 25-1; Doc. 34.) Defendant has resided at that address since 2014. (Doc.
7 30 at 1.)

8 On June 18, 2024, Northwestern Mutual submitted an answer to the Writ, which
9 indicated the company held a life insurance policy (the Policy) owned by Defendant with
10 a net cash surrender value of \$96,197.97. (Doc. 8.) Northwestern Mutual's answer also
11 indicated that notice of the answer had been sent to Defendant on June 11, 2024. (Doc. 8
12 at 6.) Defendant had 20 days after receiving the answer to file a written objection to the
13 answer. 28 U.S.C. § 3205(c)(5). After the 20-day period expired, on July 11, 2024, the
14 United States moved for a garnishment disposition order, which the Court issued. (Docs.
15 13, 14.) The order required Northwestern Mutual to exercise the surrender rights under the
16 Policy and pay the sum to the Clerk of Court towards Defendant's balance. (Doc. 14.)

17 According to Defendant's first sworn affidavit in support of his Rule 60(b) Motion,
18 Defendant did not receive notice of the attempt to garnish the cash value of the Policy until
19 July 17, 2024. (Doc. 24 at 1.) After receiving notice, Defendant notified his attorney, who
20 filed an objection on July 22, 2024, arguing the cash value of the life insurance policy is
21 exempt from garnishment under Arizona law. (*Id.* at 2; Doc. 17.) On July 26, 2024,
22 Defendant received a notification the Policy had been surrendered effective July 22, 2024.
23 (Doc. 24 at 2.) On July 27, 2024, Defendant received a letter from Northwestern Mutual
24 stating the Court had entered a Garnishment Disposition Order. (*Id.*) Defendant maintains
25 that he acted diligently as soon as he received actual notice of the attempted garnishment.
26 (Doc. 29 at 2.)

27 On July 30, 2024, the United States responded to Defendant's objection, arguing (1)
28 the objection was untimely; (2) the objection was invalid because the Court had already

1 entered a disposition order; and (3) the exemption under Arizona law did not apply. (Doc.
 2 20 at 2–4.) On August 7, 2024, Defendant filed the pending Rule 60(b) Motion for Relief
 3 from Judgment, arguing the Court should vacate the Garnishment Disposition Order and
 4 order the United States to return the cash value of the Policy received from Northwestern
 5 Mutual. (Doc. 23.)

6 **II. Legal Standard**

7 Federal Rule of Civil Procedure 60(b) provides that a court may relieve a party from
 8 a final judgment for several enumerated grounds, including “mistake, inadvertence,
 9 surprise, or excusable neglect,” or for “any other reason that justifies relief.” Fed. R. Civ.
 10 P. 60(b)(1), (6). Where a defendant seeks relief under Rule 60(b)(1) based upon “excusable
 11 neglect,” courts apply three factors: “(1) whether the plaintiff will be prejudiced, (2)
 12 whether the defendant has a meritorious defense, and (3) whether the culpable conduct of
 13 the defendant led to the default.” *Brandt v. Am. Bankers Ins. Co. of Fla.*, 653 F.3d 1108,
 14 1111 (9th Cir. 2011) (quoting *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984)). The court
 15 will not reopen a case “in the absence of some showing of a meritorious defense.” *Haw.*
 16 *Carpenters' Tr. Funds v. Stone*, 794 F.2d 508, 513 (9th Cir. 1986). “The determination is
 17 at bottom an equitable one, taking account all relevant circumstances surrounding the
 18 party’s omission.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380,
 19 395 (1993). Under subsection (b)(6), a party must show “extraordinary circumstances”
 20 suggesting that the party is faultless in the delay. *Id.* at 393. Although Rule 60(b) should
 21 be liberally construed, the policy behind the rule favors the finality of judgments on merits.
 22 *Falk*, 739 F.2d at 463.

23 **III. Discussion**

24 Mayorquin argues he is entitled to relief from the Garnishment Disposition Order
 25 because: (1) he did not receive proper and timely notice of the garnishment of the Policy,
 26 which constitutes extraordinary circumstances justifying relief under Rule 60(b); and (2)
 27 he has a meritorious defense because the cash value of the Policy is exempt from execution
 28 under Arizona law. (Doc. 23 at 3.) The United States argues (1) the purported lack of notice

1 does not amount to extraordinary circumstances under Rule 60(b)(6); and (2) the Policy
2 does not fall within the applicable exemptions provided for in 18 U.S.C. § 3613(a) and
3 state law exemptions do not apply. (Doc. 25 at 3–4.) The second Rule 60(b) factor requires
4 the Court to consider the merits of Mayorquin’s defense in determining whether to grant
5 the motion to reopen. The Court concludes that Mayorquin does not have a meritorious
6 defense because the state law exemption does not apply, a determination that is fatal to his
7 request for relief.

8 The Arizona statute at issue states: “The following property is exempt from
9 execution, attachment or sale on any process issued from any court: . . . The cash surrender
10 value of life insurance policies where for a continuous unexpired period of two years the
11 policies have been owned by a debtor. The policy shall have named as beneficiary the
12 debtor’s surviving spouse.” A.R.S. § 33-1126A(6). The Policy appears to meet the
13 exemption’s requirements because it names Mayorquin’s surviving spouse as beneficiary
14 and Mayorquin has owned the policy for a continuous period of more than two years.
15 (Docs. 8 at 4; 23 at 2; 24 at 1.) The only legal issue before the Court is whether the Arizona
16 state law exemption applies to this garnishment proceeding under the Mandatory Victims
17 Restitution Act of 1996 (MVRA), Pub. L. No. 104-132, 110 Stat. 1227, and Federal Debt
18 Collection Procedures Act (FDCPA), 28 U.S.C. §§ 3001–3308. The party objecting to a
19 garnishment bears the burden of proving the grounds for the objection. 28 U.S.C. §
20 3205(c)(5). The Arizona exemption does not apply in this case because the MVRA
21 explicitly states that (1) state law exemptions are inapplicable, and (2) unmatured life
22 insurance contracts are not exempt from enforcement proceedings conducted pursuant to
23 federal law.

24 The FDCPA provides civil procedures for the United States to recover judgments
25 on debts. 28 U.S.C. § 3001(a)(1). The FDCPA defines “debt” to include both fines and
26 restitution, and a “judgment” may arise from either a civil or criminal proceeding. 28
27 U.S.C. § 3002(3)(B), (8). The MVRA governs the payment of restitution to crime victims
28 and expressly provides that the FDCPA’s civil enforcement remedies may be used to

1 enforce judgments of fines and restitution entered under the MVRA. *United States v. Mays*,
 2 430 F.3d 963, 965 (9th Cir. 2005). The Ninth Circuit has analyzed the legislative history
 3 of the MVRA, determining that the MVRA was meant to (1) broaden the government's
 4 collection powers to "ensure that criminals pay full restitution to their victims for all
 5 damages caused as a result of the crime," and (2) "consolidat[e] the procedures for the
 6 collection of unpaid restitution with existing procedures for the collection of unpaid fines."
 7 *In re Partida*, 862 F.3d 909, 913 (9th Cir. 2017) (quoting H.R. REP. NO. 104-16, at 4
 8 (1995); S. REP. NO. 104-179, at 12 (1995)). Here, the United States has availed itself of the
 9 procedures of the FDCPA in applying for garnishment of the Policy as a means to enforce
 10 the judgment entered under the MVRA. (Doc. 13 at 1); *see* 18 U.S.C. § 3613(a); 28 U.S.C.
 11 § 3205. The parties' disagreement centers on whether the MVRA's enforcement provision,
 12 18 U.S.C. § 3613(a), includes exemptions under state law.

13 This question is answered by the plain language of the FDCPA and MVRA. The
 14 MVRA's enforcement provision states:

15 The United States may enforce a judgment imposing a fine in
 16 accordance with the practices and procedures for the enforcement of a civil
 17 judgment under Federal law or State law. Notwithstanding any other Federal
 18 law (including section 207 of the Social Security Act), a judgment imposing
 19 a fine may be enforced against all property or rights to property of the person
 20 fined, except that--

21 (1) property exempt from levy for taxes pursuant to section
 22 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal
 23 Revenue Code of 1986 shall be exempt from enforcement of the judgment
 24 under Federal law;

25 (2) section 3014 of chapter 176 of title 28 shall not apply to
 26 enforcement under Federal law; and

27 (3) the provisions of section 303 of the Consumer Credit Protection
 28 Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under
 Federal law or State law.

23 18 U.S.C. § 3613(a). The first sentence's practical effect is "to allow the government to
 24 collect under the FDCPA in addition to individual state laws." *In re Partida*, 862 F.3d at
 25 913 (citing *Mays*, 430 F.3d at 965). Defendant's argument that the enforcement must be in
 26 accordance with state law misreads the statutory language. (Doc. 29 at 2–3.) "The United
 27 States *may* enforce a judgment . . . in accordance with the practices and procedures for
 28 enforcement of a civil judgment under Federal law *or* State law." 18 U.S.C. § 3613(a)

(emphasis added). Here, the United States is enforcing the judgment against Defendant in accordance with the enforcement procedures in the FDCPA, a federal law. And the FDCPA explicitly preempts state law to the extent state law is inconsistent with the FDCPA. 28 U.S.C. § 3003(d). Regardless, “practices and procedures” are not the same as property exemptions.

The remainder of the provision addresses the types of property that are exempt from enforcement. Defendant ignores the listed exemptions and instead argues “there is no language in [18 U.S.C. § 3613(a)] that renders Arizona exemptions ineffective.” (Doc. 29 at 2–3.) This argument is unpersuasive. First, the Ninth Circuit has interpreted the “all property or rights to property” language as demonstrating Congress’s clear intent that “the totality of defendants’ assets will be subject to restitution orders.” *United States v. Novak*, 476 F.3d 1041, 1046 (9th Cir. 2007).

Second, the MVRA recognizes only ten types of property as exempt from enforcement—those enumerated by reference to 26 U.S.C. § 6334(a), the Internal Revenue Code’s (IRC) list of the types of property exempt from tax levy, and the cash surrender value of life insurance policies is not one of the enumerated types of property. *See id.* § 3613(a)(1); 26 U.S.C. § 6334(a); *United States v. DeCay*, 620 F.3d 534, 541 (5th Cir. 2010) (“The only property exempt from garnishment under § 3613(a) is property that the government cannot seize to satisfy the payment of federal income taxes.”); *United States v. Irving*, 452 F.3d 110, 126 (2d Cir. 2006) (“[Section] 3613(c) demands that criminal fines in favor of the United States should be enforced in the same manner as a tax liability would be enforced.”).

Third, while the FDCPA allows debtors to elect to exempt property that is exempt under the state law of the debtor’s domicile, 28 U.S.C. § 3014(a)(2)(A), the MVRA explicitly overrides the FDCPA’s exemptions. 18 U.S.C. § 3613(a)(2) (“section 3014 of chapter 176 of title 28 shall not apply to enforcement under Federal law”); *see United States v. Drapeau*, 388 F. Supp. 3d 1289, 1294 (W.D. Wash. 2019) (“state law exemptions to garnishment that would otherwise be applicable under the FDCPA . . . do not apply to a

1 federal action seeking the collection of a criminal restitution debt under the MVRA”); *cf.*
 2 *United States v. Nash*, 175 F.3d 440, 443 (6th Cir. 1999) (finding that the IRC’s prohibition
 3 on criminal defendants using state exemptions to protect assets in tax enforcement
 4 proceedings also applies to garnishment proceedings under the MVRA). Other courts have
 5 found the MVRA precludes defendants from relying on state law exemptions in
 6 garnishment and other enforcement proceedings. *See, e.g., United States v. Golden*, No.
 7 CR-07-281-D, 2010 WL 5141706 at * 2–3 (W.D. Okla. 2010) (holding state law
 8 exemptions for retirement funds did not apply to garnishment proceeding under FDCPA
 9 seeking restitution); *Drapeau*, 388 F. Supp. 3d at 1294 (holding the MVRA overrides the
 10 FDCPA’s protections for co-owned property that is exempt from garnishment under state
 11 law).¹ The Court therefore rejects Defendant’s argument that the MVRA’s property
 12 exemptions override exemptions found in other federal laws, but not exemptions found in
 13 state laws. (Doc. 29 at 3.)

14 In conclusion, Defendant has not met his burden of proving the grounds for his
 15 motion. Because the MVRA precludes the application of state law property exemptions to
 16 enforcement proceedings conducted under the FDCPA, Defendant does not have a
 17 meritorious defense that would justify vacating the Garnishment Disposition Order or
 18 reopening this matter under Rule 60.

19 Accordingly,

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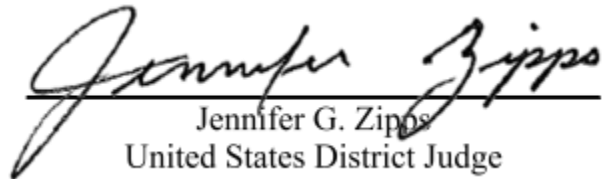
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 26 ¹ Notably, the FDCPA incorporates the types of property exempt from execution in
 27 bankruptcy proceedings. 28 U.S.C. § 3014(a)(1); *see* 11 U.S.C. § 522(d). The bankruptcy
 28 exemptions include “Any unmatured life insurance contract owned by the debtor.” 11
 U.S.C. § 522(d)(7). Yet the MVRA overrides this exemption in the FDCPA. 18 U.S.C. §
 3613(a)(2). Defendant has not satisfactorily explained how the Arizona exemption could
 apply when the MVRA explicitly overrides both state exemptions and exemptions for the
 type of life insurance policy at issue in this case.

IT IS ORDERED:

1. Defendant's Rule 60 Motion for Relief from Judgment (Doc. 23) is **denied**.

Dated this 17th day of October, 2024.


Jennifer G. Zippo
United States District Judge